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PRAXAIR DISTRIBUTION INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL INSURANCE COMPANY,

Plaintiff,

vs.

PRAXAIR DISTRIBUTION INC., a foreign  
corporation; HARSCO CORPORATION,  
SHERWOOD VALVE DIVISION, a foreign  
corporation; ad DOES 1 THROUGH 50,  
inclusive,

Defendants.

Case No. CV-04-03943 SC-EDL

**[PROPOSED] ORDER GRANTING  
DEFENDANT PRAXAIR  
DISTRIBUTION, INC.'S MOTION TO  
COMPEL FURTHER DISCOVERY**

Hearing Date: Tuesday, August 2, 2005  
Time: 9:00 A.M.  
Place: Courtroom E, 15th Floor

The motion of defendant PRAXAIR DISTRIBUTION, INC. ("PDI") for an order, pursuant to Federal Rule of Civil Procedure 37, to compel plaintiff FEDERAL INSURANCE COMPANY ("Federal"), to provide defendants with full and complete responses to PDI's interrogatories and request for production of documents, having come before the Court on August 2, 2005, and the Court having considered the papers submitted by the parties in support of and in opposition to defendants' motion, and having heard the arguments of counsel:

IT IS ORDERED that defendants' motion is granted as follows:

1. Plaintiff shall provide to PDI a signed verification to its April 25, 2005 Interrogatory Responses by Friday, August 5, 2005.
2. Plaintiff shall provide signed Supplemental Responses to PDI's First Set of Request for Production of Documents and produce all documents responsive to each and every Request in

its possession, custody and control, whether in Federal's possession or in Exelixis' possession by Tuesday, August 16, 2005. In addition, plaintiff's objections to PDI's Requests are overruled.


3. Plaintiff shall provide signed and verified Supplemental Answers to PDI's First Set of Interrogatories by Tuesday, August 16, 2005. Specifically, plaintiff shall fully answer Interrogatory Nos. 7, 8, 9, 10, 11, 15, 16, 17, and 18 without objections, and plaintiff's objections to those interrogatories are overruled.

4. With respect to the interrogatories and document requests relating to PDI's training of Exelixis, the information sought relates only to any training provided by PDI to Exelixis during the period prior to the incident on or about April 2, 2002.

IT IS FURTHER ORDERED that, to the extent Federal is unable to obtain information or locate documents responsive to one or all of the Interrogatories or Document Requests, Federal shall provide PDI with a declaration from a person with personal knowledge as to the following matters: (a) the specific efforts Federal and Exelixis used to locate documents responsive to the request; (b) that all documents discovered that are responsive to the requests have been produced; (c) that Federal and Exelixis has exhausted its efforts to locate documents responsive to the request; and/or (d) an explanation why the documents responsive to the request cannot be produced.

**IT IS SO ORDERED.**

Dated: August 4, 2005



United States Magistrate Judge

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